

**ADDENDUM TO
LOCAL POLICIES AND PROCEDURES
2007**

This document serves as an addendum to the local policies and procedures for this school division/state-operated program. It outlines those modifications which are required to ensure compliance with the Individuals with Disabilities Education Improvement Act of 2004's (IDEA '04) federal implementing regulations, at 34 C.F.R. Part 300 *et al.*, which became effective October 13, 2006. The modifications outlined below are in addition to those changes which were required for the 2006-2007 Annual Plan process to ensure compliance with IDEA '04, and which were outlined in the Virginia Department of Education's guidance document entitled, "Required Modifications to Local Policies and Procedures," dated November 2005. The applicable federal regulation is referenced with each of the following provisions.

8 VAC 20-80-40 Responsibility of Local Education Agencies (LEAs) and State-Operated Programs (SOPs)

- All reasonable steps are taken to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time that students without disabilities receive instructional materials. § 300.172(b)(4)

8 VAC 20-80-45 Special Education Staffing Requirements

- Special education and related services personnel, including paraprofessionals have the content knowledge and skills to serve children with disabilities. § 300.156(a)

8 VAC 20-80-50 Child Find

There are no required modifications in this area.

8 VAC 20-80-52 Referral for Evaluation

There are no required modifications in this area.

8 VAC 20-80-54 Evaluation

- If a child is a ward of the state and is not residing with a parent, the LEA is not required to obtain informed consent from a parent for an initial evaluation to determine whether a child is a child with a disability if:

- Despite reasonable efforts, the LEA cannot discover the parent's whereabouts;
- The parent's rights have been terminated; or
- The rights of the parent to make educational decisions have been subrogated under state law and consent for the initial evaluation has been given by the individual appointed by the judge to represent the child.

§ 300.300(a)(2)

- A reevaluation is completed if it is determined that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation. §300.303(a)(1)

8 VAC 20-80-56 Eligibility

- Upon completion of an evaluation, a group of qualified professionals and the parent of the child determine whether the child is a child with a disability and the educational needs of the child. § 300.306(a)(1)
- A copy of the evaluation report and documentation of the eligibility determination is made available to the parent at no cost. § 300.306(a)(2)
- A child is not determined to be a child with a disability if the determinant factor is a lack of appropriate instruction in math. § 300.306(b)(1)(ii)
- Policies and procedures, which are consistent with the Virginia Department of Education's (VDOE) state criteria, are in place for determining whether or not a student is eligible for special education and related services as a student with a Specific Learning Disability.
- A child may be determined eligible for special education and related services as a student with a specific learning disability if:
 - The child does not achieve adequately for the child's age or to meet VDOE-approved grade level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or VDOE-approved grade level standards:
 - Oral expression;
 - Listening comprehension;
 - Written expression;
 - Basic reading skills;
 - Reading fluency skills;
 - Reading comprehension;

- Mathematics calculation; and
 - Mathematics problem solving;
- The child does not make sufficient progress to meet age or VDOE-approved grade-level standards in one or more of the above eight areas when using a process based on the child's response to intervention; or
 - The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, VDOE-approved grade level standards, or intellectual development, that is determined by the eligibility group to be relevant to the identification of a specific learning disability, using appropriate assessments.

§ 300.309(a)(1) and (a)(2)

- A child is not determined eligible for specific learning disability if the child's underachievement was primarily the result of limited English proficiency.

§ 300.309(a)(3)

- Prior to determining that a student is eligible for special education and related services as a student with a specific learning disability, to ensure that the underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the eligibility group considers, as part of the evaluation
 - data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
 - data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

§ 300.309(b)

- By mutual written agreement with the parent, the eligibility group may extend the evaluation and eligibility timeline to obtain additional data. § 300.309(c)
- A child suspected of having a specific learning disability is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty. For this observation, the eligibility group either:
 - Uses information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

- Has at least one member of the eligibility group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained.

(If a child is less than school age or out of school, an eligibility group member observes the child in an environment appropriate for a child of that age.) § 300.310

- In addition to the requirements outlined in the Virginia Regulations, at 8 VAC 20-80-56 C. 7., for a child suspected of having a specific learning disability, the documentation of the eligibility determination contains a statement of:
 - Whether the child does not achieve adequately for the child's age or to meet VDOE-approved grade-level standards; and whether the child does not make sufficient progress to meet age or VDOE-approved grade-level standards, or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, VDOE-approved grade level standards or intellectual development;
 - The determination of the eligibility group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
 - If the child has participated in a process that assesses the child's response to scientific, research-based intervention,
 - the instructional strategies used and the student-centered data collected; and
 - the documentation that the child's parents were notified about Virginia's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; and the parents' right to request an evaluation.

§ 300.311

8 VAC 20-80-58 Termination of Special Education and Related Services

There are no required modifications in this area.

8 VAC 20-80-60 Free Appropriate Public Education (FAPE)

- A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, residing within the

jurisdiction of the local educational agency, even though the child has not failed or been retained in a course or grade, and is advancing grade to grade. § 300.101(c)

- A child with a disability's FAPE entitlement is not terminated by the child's receipt of an alternative degree that is not fully aligned with Virginia's academic standards. For example, an age eligible child may continue to be entitled to FAPE as a student with a disability, even if the student has received a general educational development credential (GED), a Modified Standard Diploma, or a Special Diploma. § 300.102(a)(3)(iv)
- A child with a disability is not entitled to FAPE who is eligible to receive special education and related services in accordance with Section 619 of Part B of IDEA '04, but who instead receives early intervention services under Part C of IDEA '04. § 300.102(a)(4)
- A child with a disability is entitled to the provision of supplementary aids and services, as determined appropriate and necessary by a child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford the child an equal opportunity to participate in those services and activities. § 300.107(a)
- A child with a disability's FAPE entitlement includes the provision of physical education (PE) services, specially designed if necessary, unless the LEA enrolls children without disabilities and does not provide physical education to children without disabilities in the same grade as the student with a disability. However, if PE is required by a student's IEP, those services are provided in accordance with the student's IEP. § 300.108
- The external components of a student's surgically implanted device are ensured to be functioning properly; however the LEA is not responsible for the post-surgical maintenance, programming, or replacement of the medical device. § 300.113(b)

8 VAC 20-80-62 Individualized Education Program (IEP)

- An IEP includes those components that are required by the federal and state special education regulations. § 300.320(d)(1)
- If a purpose of an IEP meeting is to consider the child's postsecondary goals and the transition services needed to assist the child in reaching those postsecondary goals, then, to the extent appropriate, and with the consent of the parents, a representative of any participating agency that is likely to be responsible for providing or paying for transition services is invited to the IEP meeting. § 300.321(b)(3)
- Each IEP team includes all currently required individuals, including the parent, unless:
 - The LEA and the parent agree in writing that the member's attendance is not necessary because the member's area of the curriculum or related service is not being modified or discussed during the IEP meeting; or

- The LEA and the parent consent in writing to excuse the member from the IEP meeting, in whole or in part, because even though the member's area of the curriculum or related service is being modified or discussed during the IEP meeting, the member has submitted written input regarding the development of the student's IEP prior to the meeting. § 300.321(e)
- If a child was previously served under Part C, for an initial IEP team meeting, and at the request of the parent, the Part C service coordinator or other representatives is invited to the IEP meeting to assist with the smooth transition of services. § 300.321(f)
- In addition to the other requirements outlined in the Virginia Regulations, at 8 VAC 20-80-62 D. 2., an IEP meeting notice informs the parents of the right to have the Part C service coordinator or other representatives participate in the initial IEP team meeting for a child who was previously served under Part C. § 300.322(b)(1)(ii)
- When a child's IEP is amended, the members of the child's IEP team are informed of the changes. § 300.324(a)(4)(ii)

8 VAC 20-80-64 Least Restrictive Environment and Placements

- Each child with a disability has the supplementary aids and services, as determined appropriate and necessary by a child's IEP team, for the child to participate in nonacademic settings. § 300.117

8 VAC 20-80-65 Placement of Children at the Virginia School for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton

There are no required modifications in this area.

8 VAC 20-80-66 Private School Placements

- Child find activities relative to the private, including religious, elementary and secondary schools located within this jurisdiction, include parentally-placed private school children who reside in a state other than Virginia or a country other than the United States.

§ 300.131(f)

- If a proportionate share of both 611 and 619 funding to provide equitable services to parentally-placed private school children with disabilities has not been expended by the end of the fiscal year for which the funds were appropriated, the remaining funds for special education and related services to parentally-placed private school children with

disabilities are obligated during a carry-over period of one additional year. § 300.133(a)(3)

- State and local funds may supplement, but not supplant, the federal funds required to be expended for parentally-placed private school children with disabilities. § 300.133(d)

8 VAC 20-80-68 Discipline Procedures

- A functional behavioral assessment (FBA) is completed, and a behavioral intervention plan (BIP) developed, if necessary, because a child's behavior is impeding the child's learning or that of others; or if a child's behavior is determined to be a manifestation of the child's disability. § 300.530
- The LEA is deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:
 - The child's parent expressed concern in writing to supervisory or administrative personnel, or a teacher of the child, that the child is in need of special education and related services;
 - The child's parent requested an evaluation of the child; or
 - The teacher of the child, or other LEA personnel, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the LEA or to other supervisory personnel of the LEA.

§ 300.534(b)

8 VAC 20-80-70 Procedural Safeguards

- Parental consent is obtained each time that the LEA seeks to access public benefits or insurance to provide special education and related services to a child with a disability. The child's parents are also notified that the parents' refusal to allow access to their public benefits or insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents. § 300.154(d)(2)(iv)
- If the parent of a child who is enrolled in the LEA, or who is seeking enrollment in the LEA, refuses consent for an initial evaluation, or fails to respond to the LEA's request for consent for an initial evaluation, the LEA may, but is not required to, pursue the evaluation via mediation or due process. If the parent refuses consent for a reevaluation, the LEA may, but is not required to, pursue the evaluation via mediation or due process. If the LEA opts not to pursue the initial evaluation or the reevaluation, the LEA does not violate its eligibility determination obligations. §§ 300.300(a)(3) and 300.300(c).

- If a parent fails to respond or refuses to consent to the initial provision of special education and related services, the LEA may not use mediation or due process to secure parental consent. § 300.300(b)(3).
- If a parent of a child who is home-schooled, or who is parentally-placed in a private school, refuses consent for either an initial evaluation or a reevaluation, or fails to respond to a request to provide consent, the LEA may not use mediation or a due process hearing to secure parental consent. However, if the parent fails to provide consent, the LEA is not required to consider the child eligible for equitable services. § 300.300(d)(4)
- To document that the LEA has made reasonable efforts to obtain parental consent, when required, the LEA must document its attempts to obtain consent using the same procedures outlined in the Virginia Regulations, at 8 VAC 20-80-62 D.4.a. through D.4.c. § 300.300(d)(5)
- A parent is entitled to only one independent educational evaluation at public expense each time the LEA conducts an evaluation with which the parent disagrees.

§ 300.502(b)(5)

- If an independent education evaluation is obtained at public expense, either the parent or the LEA may present the results at a due process hearing. § 300.502(c)(2)
- A copy of the procedural safeguards is available to the parents of a child with a disability at least one time per school year, and as follows: Upon initial referral; upon parental request for an evaluation; upon receipt of the first state complaint in a school year; upon receipt of the first request for due process hearing during a school year; if a student's disciplinary removal constitutes a change in placement; and upon parental request.

§ 300.504(a)

8 VAC 20-80-70 G. Confidentiality of Personally Identifiable Information

- Parental consent is obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.
- § 300.622(b)(2)
- If a child, who is a resident of this locality, is enrolled, or is going to enroll in a private school that is not located in this locality, parental consent is obtained before any personally identifiable information about the child is released between the LEA and the LEA where the private school is located. § 300.622(b)(3)

8 VAC 20-80-72 Transfer of Rights to Students Who Reach the Age of Majority

There are no required modifications in this area.

8 VAC 20-80-74 Mediation

There are no required modifications in this area.

8 VAC 20-80-76 Due Process Hearing

- A party filing a request for a due process hearing may, but is not required to, use VDOE's model request for due process hearing form. However, to be considered sufficient, the due process hearing request must contain all required elements. § 300.509(b)
- Unless the LEA and the parent jointly agree to waive the resolution meeting or to use mediation, the failure of a parent filing the request for a due process hearing to participate in the resolution meeting will delay the timelines for convening a due process hearing until the resolution meeting is held. § 300.510(b)(3)
- If the LEA is unable to obtain parental participation in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day resolution period, request that a hearing officer dismiss the parent's request for due process. § 300.510(b)(4)
- If the LEA fails to hold a resolution meeting within 15 days of receiving notice of a parent's request for a due process hearing, or fails to participate in the resolution meeting, the parent may seek the intervention of the hearing officer to begin the due process hearing timeline. § 300.510(b)(5)
- The 45-day timeline for the due process hearing starts the day after one of the following events:
 - The parties agree in writing to waive the resolution session;
 - The parties agree in writing that no agreement is possible after the initiation of the resolution meeting or mediation, but before the conclusion of the resolution period; or
 - If, at the end of the 30-day resolution period, the parties agree in writing to continue the resolution period to continue with mediation, but later, either the LEA or the parent withdraws from the mediation process. § 300.510(c)
- As a result of a due process hearing, a court, in its discretion, may award reasonable attorneys' fees to VDOE or LEA:

- Against the parent's attorney, if either VDOE or LEA are the prevailing party and it is determined that the due process hearing request or subsequent action was frivolous, unreasonable, or without foundation, or the parent's attorney continued to litigate the action after it clearly became frivolous, unreasonable, or without foundation; and
- Against the parent or the parent's attorney, if either VDOE or LEA are the prevailing party and it is determined that the due process hearing request or subsequent action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

§ 300.517(a)
- If the request for a due process hearing involves an application for initial services for a child who is transitioning from Part C, but who is no longer eligible for Part C services because the child has turned three, the LEA is not required to provide the services that the child had been receiving under Part C. However, if the child is found eligible for special education and related services, and the parent consents to the initial provision of those services, the LEA must provide the special education and related services that are not in dispute between the LEA and the parent. § 300.518(c)
- In an expedited due process hearing, unless the LEA and the parent agree to waive it, the resolution meeting must be convened within seven days of receiving notice of the request for a due process hearing. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the request for the hearing. § 300.532(c)(3)

8 VAC 20-80-78 Complaint Procedures

- In addition to the previously required elements, as outlined in the Virginia Regulations, at 8 VAC 20-80-78 B., a complaint must include the following elements:
 - The complainant's signature and contact information;
 - If alleging violations regarding a specific child,
 - The name and address of the child;
 - The name of the school the child is attending; and
 - In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
 - A description of the nature of the problem of the child, including the facts relating to the problem; and
 - A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed. § 300.153(b)(3) and (b)(4)

- A complainant must allege a violation that occurred not more than one year prior to the date that the complainant is received by the Virginia Department of Education. § 300.153(c)
- A complainant must forward a copy of the complaint to the LEA at the same time the complainant files the complaint with VDOE. § 300.153(d)
- The Virginia Department of Education will provide the LEA with the opportunity to respond to a complaint, including, at a minimum, at the discretion of the LEA, a proposal to resolve the complaint; and an opportunity for a parent who has filed a complaint and the LEA to voluntarily engage in mediation. § 300.152(a)(3)
- To engage in mediation, the LEA and a complainant may agree to extend the 60-day timeline for completing the complaint procedures. § 300.152(b)(1)
- A party filing a state complaint may, but is not required to, use VDOE's model complaint form. However, to be considered sufficient, the complaint must contain all required elements. § 300.509(b)

8 VAC 20-80-80 Surrogate Parent Procedures

- Until a surrogate parent who meets the requirements of the Virginia Regulations, at 8 VAC 20-80-80 D., can be appointed, the LEA may appoint appropriate staff from an emergency shelter, transitional shelters, independent living program, or a street outreach program to serve as a temporary surrogate parent for a child who is an unaccompanied homeless youth, even though the individual is an employee of an agency involved in the education or care of a child, as long as the temporary surrogate meets all other qualifications required for a surrogate parent. § 300.519(f)

Full Education Opportunity Goal

There are no required modifications in this area.